NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. JAMES LEE HYFIELD, Appellant.	2 CA-CR 2007-0404 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20064153

Honorable Howard Fell, Judge Pro Tempore

AFFIRMED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and Joseph T. Maziarz — Phoenix
Attorneys for Appellee

Harriette P. Levitt — Tucson
Attorney for Appellant

B R A M M E R, Judge.

¶1 Appellant James Hyfield appeals from his convictions of three counts each of manslaughter and endangerment, and one count each of leaving the scene after causing an accident involving death or serious physical injury, aggravated driving under the influence of an intoxicant (DUI) while his driver's license was suspended, criminal damage, and causing death by use of a motor vehicle while his driver's license was suspended. He argues the trial court erred by denying his motion to suppress evidence obtained when Pima County Sheriff's Department (PCSD) deputies entered his apartment without a warrant. Finding no error, we affirm.

Factual and Procedural Background

¶2 Viewing the facts, and the reasonable inferences drawn therefrom, in the light most favorable to upholding the verdicts, *see State v. Cropper*, 205 Ariz. 181, ¶ 2, 68 P.3d 407, 408 (2003), the record shows that, at approximately 9:45 p.m. on October 27, 2006, an intoxicated Hyfield drove his truck through a red light, striking a car with two occupants in the intersection. Hyfield's truck then collided with another car, killing its three occupants, including a twenty-one-month-old child. Hyfield fled the scene and rested in some bushes about one hundred yards from the crash site. Hyfield's passenger, his roommate E., had been rendered unconscious in the crash but also left the accident site after he awoke.

¶3 Approximately thirty minutes after the crash, PCSD deputies found E., who told them Hyfield had been driving the truck. Three deputies then went to Hyfield's apartment. After he failed to answer the door, they kicked it in and entered the apartment to

"check [Hyfield's] welfare" to ensure he "was not in there bleeding, dying or dead." Hyfield was not in the apartment. The deputies saw an empty bottle of gin on a table in the living room, copied a telephone number from the refrigerator, took a photograph of the door they had damaged in entering the apartment, and left. The photograph of the door coincidentally showed the gin bottle on the living room table. When one of the deputies called the telephone number they had copied, he reached a woman who gave him information about G., Hyfield's former girlfriend, whom the deputies later contacted.

¶4 Deputies returned to the apartment the following morning after receiving word that Hyfield was there. Hyfield was arrested and charged with the ten felony counts of which he was eventually convicted after a four-day jury trial. After finding Hyfield had an historical prior felony conviction, the trial court sentenced him to a combination of concurrent and consecutive, presumptive prison terms totaling thirty-six years. This appeal followed.

Issues and Discussion

Warrantless Entry

¶5 Before trial, Hyfield moved to suppress evidence obtained during the deputies' initial warrantless entry into his apartment, arguing the entry had not been justified. He asserted the court should suppress "[G.]'s identity and her testimony as a witness" and "the observations of the [gin] bottle on the table." The court denied the motion.

¶6 We will not disturb a ruling on a motion to suppress "absent clear and manifest error." *State v. Smith*, 123 Ariz. 231, 239, 599 P.2d 187, 195 (1979). "[W]e defer to the trial court's factual findings, including findings on credibility and the reasonableness of the inferences drawn by the officer, but we review de novo mixed questions of law and fact and the trial court's ultimate legal conclusions." *State v. Teagle*, 217 Ariz. 17, ¶ 19, 170 P.3d 266, 271 (App. 2007). In reviewing a ruling on a motion to suppress, we consider "only the evidence presented at the suppression hearing." *State v. Schinzel*, 202 Ariz. 375, ¶ 12, 45 P.3d 1224, 1227 (App. 2002). We view that evidence "in the light most favorable to sustaining the trial court's ruling." *State v. Rosengren*, 199 Ariz. 112, ¶ 2, 14 P.3d 303, 306 (App. 2000).

¶7 "The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. Similarly, the Arizona Constitution provides that '[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.'" *State v. Jones*, 188 Ariz. 388, 395, 937 P.2d 310, 317 (1997), *quoting* Ariz. Const. art. II, § 8 (alteration in *Jones*). In order to meet these constitutional requirements, the government typically must obtain a search warrant before it can search a person's home. *Id.* Some warrantless searches, however, are permitted under certain exceptions to the warrant requirement. *See id.* The "'emergency aid'" exception relied upon by the trial court here "permits police to enter a home without a warrant 'in the reasonable, good-faith belief that there is someone within in need of immediate aid or assistance.'" *Id.*, *quoting State v. Fisher*,

141 Ariz. 227, 240, 686 P.2d 750, 763 (1984). In determining whether the emergency aid exception justifies a warrantless search, we analyze:

> (1) whether police have reasonable grounds to believe that an emergency exists and that someone needs assistance for the protection of life and property; (2) whether the search is primarily motivated by intent to arrest or to seize evidence; and (3) whether there is a reasonable basis to associate the emergency with the place to be searched.

Id.

¶8 The state argues the second factor of the three-part analysis in *Jones* is unnecessary, relying on *Brigham City v. Stuart*, 547 U.S. 398 (2006). There, the Supreme Court reemphasized that an officer's subjective motives were irrelevant in determining whether a search was justified under the emergency aid exception. *See id.* at 404-05. Thus, the state reasons, we no longer consider an officer's motive for the search. We agree the deputies' subjective motive here is not relevant. *See State v. Livingston*, 206 Ariz. 145, ¶ 13, 75 P.3d 1103, 1106 (App. 2003). But we do not agree that we need not consider the second factor of this analysis. The scope and nature of a search based on the emergency aid exception must be constrained by its purpose—to render emergency aid—and we base our analysis on an objective view of an officer's actions, not on his or her subjective motivation. *See Jones*, 188 Ariz. at 396, 937 P.2d at 318 ("[A] warrantless search must be 'strictly circumscribed by the exigencies which justify its initiation.'"), *quoting Terry v. Ohio*, 392 U.S. 1, 25-26 (1968).

¶9 For example, in analyzing this factor in *Fisher*, our supreme court determined the search had been "clearly circumscribed by the exigencies that justified the intrusion," noting the officers merely had "surveyed the bedroom/living room, kitchen, and bathroom; . . . checked the shower 'to make sure there wasn't another body' . . . [and] then left the apartment." 141 Ariz. at 239, 686 P.2d at 762. Similarly, in upholding the search at issue in *Jones*, the court noted the officers stayed in the trailer "only long enough to look for the [possibly injured] children, [and] saw a bloody towel on the couch but did not disturb it or search for other evidence." 188 Ariz. at 396, 937 P.2d at 318.

¶10 "The reasonableness of a police officer's entry under the 'emergency aid' exception is a question of fact for the trial court." *Id*. at 395, 937 P.2d at 317. Thus, "absent clear and manifest error," we defer to the trial court's conclusion that the deputies acted reasonably in entering Hyfield's apartment.[1] *Id.*; *see also Fisher*, 141 Ariz. at 238, 686 P.2d at 761 (1984).

¶11 We turn now to an analysis of the three factors enumerated in *Jones*. Hyfield argues the deputies could not reasonably have concluded that an emergency existed—that is, that he had been injured in the crash and required medical assistance—because Hyfield's

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[1]To the extent the state suggests we must also defer to the trial court's legal conclusion that the search was constitutionally proper, we disagree. *See State v. Davolt*, 207 Ariz. 191, ¶ 21, 84 P.3d 456, 467 (2004) (appeals court "review[s] *de novo* the trial court's ultimate legal determination that the search complied with the requirements of the Fourth Amendment to the United States Constitution"); *Fisher*, 141 Ariz. at 238, 686 P.2d at 761 ("The reasonableness of a police officer's response in a given situation is a question of fact for the trial court."); *Teagle*, 217 Ariz. 17, ¶ 19, 170 P.3d at 271.

truck "had no major structural damage," there was no blood in the vehicle, and E., Hyfield's passenger, was not seriously injured. But there was no evidence presented at the suppression hearing about the condition of Hyfield's truck. *See Schinzel*, 202 Ariz. 375, ¶ 12, 45 P.3d at 1227. The testifying deputy stated that the crash had killed three people and injured another and that the "chances of [Hyfield] being injured seriously were great, based on the mechanics of the accident." The deputy also testified that, although he did not know the extent of the injuries to E., Hyfield's passenger, E. had "stated that he was injured and wanted medical treatment, and . . . was transported to the hospital." Hyfield did not cross-examine the deputy about the damage to the truck or the nature or severity of the crash, although the deputy noted that E. had said the truck had been "rolling" at some point during the crash. Given these facts, the evidence amply supported the trial court's finding there was a reasonable possibility Hyfield had been injured and needed medical attention.

¶12 Relevant to the third factor, Hyfield argues the deputies could not reasonably have believed Hyfield was at home when they entered his apartment. The deputy testified that, when he and the other deputies arrived at Hyfield's apartment and looked through a window, the television set was on, the living room light was on, and a dog "would bark at the window by us and then would run to a back area." He admitted he did not see any blood or bloody clothing and could not "see any activi[]ty of any people."

¶13 Hyfield argues on appeal that these facts would not allow the deputies reasonably to conclude Hyfield was inside the apartment. He reasons that "[m]any people

leave lights on in their residence when they leave, for a variety of reasons [and also] leave their television sets running, either because they forgot to turn it off, or because they want someone to think they are home." The deputy testified what he saw "could indicate that somebody[was] there, but not necessarily." Yet Hyfield cites no authority, and we find none, that suggests an officer must have certain proof that someone is inside a residence before the officer can enter under the emergency aid exception to the warrant requirement. Rather, it must merely be a reasonable inference from the available facts. The deputies' observations are entirely consistent with someone's having been present in Hyfield's apartment at the time. *See Fisher*, 141 Ariz. at 238, 686 P.2d at 761 ("The reasonableness of a police officer's response in a given situation is a question of fact for the trial court.").

¶14 Hyfield also contends it was unreasonable for the deputies to have concluded Hyfield was in the apartment because he could not have "gotten all the way across town" "if he had walked" or if he had "been seriously injured." But there was no evidence produced at the suppression hearing suggesting Hyfield could not have made his way from the accident scene to the apartment, nor of how much time had elapsed between the accident and the deputies' arrival at Hyfield's apartment.[2]

[2]Hyfield also asserts that, if he was able to make his way to his apartment, that fact would suggest he was not so badly injured as to require medical attention. But the deputy testified that, "[i]f [Hyfield] had a head injury or was bleeding internally and fled the scene, [he] could bleed out within a matter of hours or days." Thus, the deputies' conclusion that Hyfield might be at his apartment was not inconsistent with the possibility that he might have been seriously injured.

¶15 Last, Hyfield argues the deputies were primarily seeking him to arrest him and gather evidence. He argues that the deputies' recording the phone number found on his refrigerator is inconsistent with entering the apartment solely to see whether he required medical assistance. But the trial court determined that the phone number was within plain view and that, in any event, recording it was consistent with the deputies' intent to find Hyfield to determine if he needed medical assistance.

¶16 When a law enforcement officer observes evidence "in plain view," it may permissibly be seized. *See State v. Warness*, 26 Ariz. App. 359, 360, 548 P.2d 853, 854 (1976). To qualify for the "plain view" exception to the warrant requirement, "the officer must have prior justification to be in a position to view the evidence; the discovery of the object must be inadvertent; and its evidentiary value must be immediately apparent to the officer." *State v. Kelly*, 130 Ariz. 375, 378, 636 P.2d 153, 156 (App. 1981). These factors are clearly present here. Hyfield does not cite authority suggesting a police officer must ignore evidence in plain view if the officer has entered the premises under the emergency aid exception to the warrant requirement. Finally, we agree with the trial court that, even if the telephone number did not fall within the plain view exception, recording that number was consistent with the deputies' goal of finding Hyfield in case he required medical attention.

¶17 For the reasons stated, the trial court did not err in denying Hyfield's motion to suppress G.'s testimony and any evidence of the empty gin bottle in Hyfield's apartment.[3]

Harmless Error

¶18 Moreover, any error in the admission of G.'s testimony and evidence concerning the gin bottle was plainly harmless. *See State v. Davolt*, 207 Ariz. 191, ¶ 39, 84 P.3d 456, 470 (2004) (erroneous admission of evidence not reversible if error harmless). "Harmless error review places the burden on the state to prove beyond a reasonable doubt that the error did not contribute to or affect the verdict or sentence." *State v. Henderson*, 210 Ariz. 561, ¶ 18, 115 P.3d 601, 607 (2005). When evidence is erroneously admitted, the error is harmless if other evidence of guilt is overwhelming. *See State v. Petzold*, 172 Ariz. 272, 277, 836 P.2d 982, 987 (App. 1991); *State v. Weaver*, 158 Ariz. 407, 409, 762 P.2d 1361, 1363 (App. 1988); *State v. Calhoun*, 115 Ariz. 115, 117-18, 563 P.2d 914, 916-17 (App. 1977).

¶19 The evidence Hyfield sought to suppress—references to the empty gin bottle and G.'s testimony that Hyfield had sounded intoxicated when they spoke on the night of the accident—was relevant primarily to whether Hyfield had been intoxicated when the collision occurred. But the other evidence of Hyfield's intoxication was very strong. E. testified that, between approximately 5:30 p.m. and the time of the accident, Hyfield had drunk at least six

[3]Accordingly, we need not address the state's argument the evidence discovered in Hyfield's apartment would have been discovered through an independent source. *See generally Segura v. United States*, 468 U.S. 796, 799 (1984).

cans of beer and some portion of a 750-milliliter bottle of gin. Hyfield admitted that, beginning at 6:00 p.m., he had drunk a third of the bottle of gin and that he had drunk at least one beer earlier that evening. He also stated several times during his interview that he had been intoxicated before the accident. Indeed, he stated that, while lying in nearby bushes shortly after the accident, he had at one point stood up but had had to lie back down because he "felt drunk."

¶20 Moreover, the evidence the deputies had discovered in Hyfield's apartment was of only slight probative value. The presence of the gin bottle did nothing more than corroborate E.'s testimony and Hyfield's statement to police that they had shared a bottle of gin. G. testified that she believed Hyfield had been intoxicated when she had spoken to him at about 6:00 p.m. the night of the accident, but she conceded that she had merely "assum[ed]" he had been drinking and she could not tell how much alcohol Hyfield had consumed. G.'s testimony contradicted Hyfield's grandparents' testimony that they had seen Hyfield that night at approximately 6:00 p.m. and that he had not been intoxicated. But G.'s testimony was equivocal and, furthermore, the probative value of testimony about Hyfield's level of intoxication more than three hours before the accident is minor given E.'s testimony and Hyfield's admissions concerning his intoxication and how much he had drunk after 6:00 p.m. Thus, we conclude any error in the admission of G.'s testimony and evidence of the gin bottle did not contribute to the verdicts and was therefore harmless. *See Henderson*, 210 Ariz. 561, ¶ 18, 115 P.3d at 607; *Petzold*, 172 Ariz. at 277, 836 P.2d at 987.

Disposition

¶21 We affirm Hyfield's convictions and sentences.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

JOSEPH W. HOWARD, Presiding Judge

JOHN PELANDER, Chief Judge